

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 1852 of 1980

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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I.B. RAVAL  
VERSUS  
STATE OF GUJARAT

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Appearance:

MR SHAILESH BRAHMBHATT for the Petitioner  
None present for the Respondents

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 26/10/1999

C.A.V. JUDGMENT

1. In the Court two A.G.Ps. are present. On being asked by the court they stated that they have not been

instructed by the respondents to appear in this case nor the case papers are with them.

2. Heard the learned counsel for the petitioner and perused the special civil application and reply filed thereto by the respondents.

3. Shri Brahmhatt the counsel for the petitioner contended that once the State of Gujarat conferred the status of Class I services to the petitioner he could not have been taken to be as Instructor Class I but the Officer - Class I services for all the purposes, that is, as Deputy Development Officer and by promotion to the next higher post. Second contention has been raised that the order of the respondents cancelling/stopping the petitioner's pay at the stage where he was to cross the efficiency bar is wholly arbitrary and unjustified. He contended that this could not have been done by the respondents. Lastly it is contended that the respondents may be given direction to treat the petitioner as promoted to the post of the Director of State Institute of Rural Development and Panchayati Raj, Junagadh and/or what he contends that the respondents may be directed to consider the case of the petitioner of promotion to the post of Director of State Institute of Rural Development and Panchayati Raj with retrospective effect and to give him all the consequential benefits.

4. The facts of the case for the purpose of deciding this special civil application are to be taken briefly which are as follows:

5. The petitioner under the order dated 9th July, 1963 of the Under Secretary to the Government of India, Ministry of Community Development and Cooperation (Department of Community Development), New Delhi was appointed as Instructor at the Orientation Study Centre, Junagadh (Gujarat) w.e.f. 1-7-1963. It is not in dispute that this appointment of the petitioner was made after he was having been selected by the Union Public Service Commission. This appointment was given to the petitioner in the pay scale of Rs.425-900 and it was a Class II post. Under the order dated 8th July, 1963 of the Central Government the post on which the petitioner was given appointment has been classified as G.C.S. Class II Gazetted Non-Ministerial. The scheme of intermediate level training centres was transferred by the Central Government to the State of Gujarat and as a result of the same, the petitioner's services stood transferred to the Government of Gujarat. In this

respect, a document has been produced by the petitioner as annexure 'D' on the record of this special civil application. Document Annexure 'E' is also there in respect of this transfer of the Central services employees working there. The petitioner under the order of the Government of Gujarat, Panchayats and Health Department, Ahmedabad dated 28th March, 1967 was appointed as Instructor w.e.f. from 1st April, 1967 in the existing scale. This order was partially modified under the order dated 22nd May 1967 and the petitioner was appointed as Instructor (Class I) at Orientation and Study Centre, Junagadh in the scale of Rs.420-1100. However, he was not made entitled for any special pay. The pay scale of the post of Instructor (Class I) was revised to Rs.500-1250 as it is borne out from the document annexure 'H' dated 25th June, 1971. Under the resolution No. SVT/1067/795/G dated 14th August, 1969, annexure 'I' on the record of this special civil application, a decision has been taken not to include the Instructor Gr. I in Class I Gujarat Development Services cadre of Deputy District Development Officer though this post was declared to be Class I post Gazetted. The reasons have been given therein for not treating it to be a Class I post of Gujarat Development Services Cadres of Deputy District Development Officers. This is the first order which has been challenged by the petitioner in this special civil application.

6. Under annexure 'K' the letter of the Accountant General of Gujarat addressed to the Government of Gujarat, Panchayats, Housing and Urban Development Department under caption 'E.B. crossing in respect of Shri I.B. Raval, Dy. Director, State Institute of Rural Development and Panchayati Raj, Junagadh', it is stated that in case he is allowed to cross E.B. in the existing scale on 1-1-1973 he will not get any benefit in pay fixation in the revised pay scale as the pay in the revised pay scale on 1-1-1973 under Gujarat Civil Services (Revision of Pay) Rules, 1975, he is to be fixed with reference to his pay in the existing scale as on 31-12-1972. It is stated that according to Government G.R. of Finance department dated 5-12-1972 whereunder an officer is allowed to cross E.B. his pay is to be fixed as if he was not held up of E.B. crossing stage. So allowing the petitioner to draw Rs.660/- w.e.f. 1-1-1973 was stated to be not correct. This is the second grievance which has been made by the petitioner in this special civil application.

7. Lastly, as stated earlier, the petitioner claimed for promotion to the next higher post of

Director of the Institution.

8. This petition has been contested by the respondents by filing reply to the same. Though original reply is not on the record, a zerox copy is there.

9. The special civil application was admitted by this court on 5-11-1980 confining to prayers No. 21 (A), (G), (I), (J) and (K). The interim relief was not granted on the statement made on behalf of the respondents that the rules with regard to recruitment to the post of Director will be framed and appointment thereunder would be made within a period of three months and meanwhile only an I.A.S. officer would be appointed on adhoc basis to the post of Director. Earlier to this, the matter has come up before this court on 29th August, 1980, on which date, this court has ordered as under:

This is a case in which it appears to the Court that the grievance of the petitioner should be looked into at the highest administrative level, having regard to the nature of allegations made in the petition. Under the circumstances, by this interim order, the Chief Secretary to the Government of Gujarat is directed to entertain the representation which the petitioner will make to him with regard to the subject matter of this petition within a period of one week from today. The Chief Secretary will give a personal hearing to the petitioner and dispose of the representation by a speaking order within a period of one month from the date of the receipt of the representation. The order made by the Chief Secretary will be produced in this proceeding or or before October 13, 1980. Further hearing of the petition is adjourned to October 13, 1980. Writ to be sent to the Chief Secretary, Government of Gujarat forthwith.

On 3-9-80, the Court has passed the order as under:

This Court made an interim order on August 29, 1980 in this matter after hearing Mr. M.S. Shah upon whom an advance copy of the petition was served.

Pending the compliance with the interim order, it appears to the Court to be expedient to

direct notice on the main petition to issue to the respondents returnable on October 13, 1980. Mr. M.S. Shah waives service of the notice. No ad-interim relief is required to be granted at this stage because Mr. M.S. Shah states to the court that the post of the Director of the Institute in question will be filled in by an I.A.S. officer unless the rules are change, which event is not likely to occur for another two months.

10. In pursuance to the order of this court dated 29th August, 1980, the then Chief Secretary of the State passed the order on 21st October, 1980 in which with regard to the claim of the petitioner of the crossing of the efficiency bar and release of the increments after he was allowed to cross E.B., it is stated that the matter is not yet finally decided. The Chief Secretary was also of the opinion that on reading of the Government resolution dated 5th December, 1972, the petitioner's pay should have been refixed on 1st January, 1973 as if the E.B. had not operated. So he was in agreement with the opinion of the Accountant General. However, instead of passing the final order himself he directed the Panchayats, Housing and Urban Development Department to settle the question in consultation with the Finance Department strictly in accordance with the Government Resolution, F.D. dated 5-12-1972 at an early date.

11. Nobody is present on behalf of the respondents to make oral submissions but from the reply of the special civil application dated April, 1985 I find that vide order dated 15-12-1980 the petitioner has been permitted to cross the efficiency bar w.e.f. 1-1-1972 and the petitioner's pay as on 1-1-1973 has accordingly been refixed and has also been paid difference of the salary, copy of this order has been filed on the record of this special civil application as annexure 'I'.

12. It is really shocking that the counsel for the petitioner has not referred to this order. Even if the copy of this reply to the special civil application would not have been received by the counsel for the petitioner but this order has been passed in favour of the petitioner and he would have very well aware of this order and it was his duty to inform to the court accordingly. In view of this order of the State Government dated 15-12-1980, now the grievance made by the petitioner's counsel regarding the crossing of the efficiency bar and release of increments does not

survive.

13. It is an equitable extraordinary jurisdiction of this court and whosoever approaches to it has to candidly disclose all the material facts which precisely has not been done in the present case by the petitioner. The petitioner, in case would have been dissatisfied with the order of the Government certainly he would have made a complaint in this case by making necessary amendment in the special civil application which has also not been done.

14. Taking into consideration the totality of the facts of this case, the grievance of the petitioner made for crossing of the efficiency bar and release of increments does not survive.

15. So far as the grievance of the petitioner against the order annexure 'I' is concerned, it is suffice to say that it is also equally without any substance and merits. It is not in dispute that the petitioner was selected for the Class II post of Instructor and he was appointed as such in the Central services in the institution run by the former. However, on transfer of the institution, the services of the petitioner have also been transferred to the Government of Gujarat and accordingly appropriate orders have to be passed. From annexure 'C' the order of the Central Government dated 8th July, 1963, I find that the post of Instructor was classified as Gujarat Civil Services Class II Gazetted Non-Ministerial. The Central Government has classified it to be a Class II Gazetted post. From the document annexure 'I' I find that the Government of Gujarat declared the posts of Instructors of the Orientation Study Centre as Class I posts and included them in the Class I Gujarat Development Services Cadre of the Deputy District Development Officers under Government Resolution, Panchayats and Health Department No. EST-1168(7) 310-TH dated 27th September, 1968. However, this appears to have been taken to be erroneous decision and same has been corrected immediately under the order dated 14th August, 1969. It is made clear that though this post may be taken to be a Class I post but he cannot be taken to be eligible for absorption in the Gujarat Development Class I Services as functions and responsibilities of these two posts are materially different in nature. This post of Instructor held by the petitioner was ordered to be kept as an isolated post. This decision is not illegal or arbitrary nor it affects any of the fundamental rights of the petitioner. The post of Class I of

Gujarat Development Services are altogether different than the post of Instructors. The nature of work and the duties to be discharged are altogether different. The post of Instructor in rural sociology is a teaching post which has nothing to do with the post of District Development Officer. Otherwise also, the post was classified only as Class II but the State Government has acted very liberally and it has been given the status of Class I but rightly it was taken to be an isolated post. That is not the end of the matter but otherwise also this decision has been taken by the respondent way back in the year 1969 and the same has been challenged by the petitioner in the year 1980, that is, after about 11 years thereof and this challenge suffers from the vice of delay and laches. So on merits as well as on the question of delay this grievance which has been made by the petitioner in this case can not be entertained.

16. So far as the last grievance of the petitioner that the direction may be given to the respondents to promote him to the post of Director is concerned, it is suffice to say that the rules have already been framed on 13th April, 1981 after filing of this special civil application. After framing of these rules, the petitioner as he was eligible for consideration for promotion to the post of Director, his case was considered from time to time but he was never found suitable for promotion on the basis of the criteria of proved merit and efficiency and he was not given the promotion. This has been stated in the reply by the respondents. Otherwise also, the rules are framed which have been notified and the petitioner was knowing well of the same. If the criteria for promotion is there of proved merits and efficiency, no fault can be found out and the petitioner in case was not found suitable, no exception to that decision of the D.P.C. can be taken. The decision of the D.P.C. to adjudge the petitioner unsuitable for promotion to the post of Director has not been challenged by the petitioner in this special civil application. None of the grievances made by the petitioner in his special civil application survives and this petition has in fact become infructuous, as stated above, in view of the reply to this special civil application. Learned counsel for the petitioner is also not correct to state that the post of Instructor is an isolated post. From this post, I find that the petitioner has got promotion and the promotional post may also be an isolated post at one point of time but thereafter the channel of promotion has been made to the post of Director. It is a different matter that the petitioner could not stand to merits for promotion to

that post on the criteria of proved merit and efficiency and he could not get the promotion.

17. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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